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8 UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
9 CALIFORNIA – SOUTHERN DIVISION

10 MOPHIE, INC., formerly known as  
11 mSTATION Corporation, a California  
12 Corporation, and DANIEL HUANG, an  
individual,

13 Plaintiffs,

14 vs.

15 LOZA & LOZA, LLP, a California  
16 Limited Liability Partnership, JULIO  
17 LOZA, an individual and CHRISTINE S.  
LOZA, an individual,

18 Defendants.  
19  
20  
21  
22

CASE NO. SACV11-00539 DOC (MLGx)

COMPLAINT FOR COMPENSATORY  
AND PUNITIVE DAMAGES:

(1) PROFESSIONAL NEGLIGENCE

(2) BREACH OF FIDUCIARY DUTY

(3) NEGLIGENT

MISREPRESENTATION

JURY TRIAL DEMANDED

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1 Plaintiffs Mophie Inc., formerly known as mStation Corporation (“Mophie”)  
 2 and Daniel Huang (“Mr. Huang”) (collectively, “Plaintiffs”), allege as follows:

### 3 INTRODUCTION

4 1. Plaintiffs Mophie and Daniel Huang bring this action seeking redress for  
 5 Defendants' professional negligence and malfeasance, which caused Mophie to lose  
 6 valuable intellectual property rights, to suffer damage to its reputation and the  
 7 prestige of its products, and to incur significant financial damage resulting from  
 8 avoidable lawsuits caused solely by Defendants' unprofessional, unethical and  
 9 negligent conduct.

10 2. As a result of Defendants' wrongful conduct, Plaintiffs have suffered  
 11 economic injury and seek damages to make them whole.

### 12 JURISDICTION AND VENUE

13 3. Jurisdiction is proper before this Court pursuant to 29 U.S.C. § 1338,  
 14 because elements of the claims require resolution of a substantial question of federal  
 15 patent law. *See Air Measurement Technologies, Inc. v. Akin Gump Strauss Hauer &*  
 16 *Feld, L.L.P.*, 504 F.3d 1262 (Fed. Cir. 2007) (holding state law claim for legal  
 17 malpractice before the USPTO arose under federal patent law); *Immunocept LLC v.*  
 18 *Fulbright & Jaworski, LLP*, 504 F.3d 1281 (Fed. Cir. 2007) (same).

19 4. Venue is proper in this district because Plaintiff Mophie's offices are  
 20 located in Orange County, and Defendants maintain an office in Orange County.  
 21 Many of the services and events giving rise to this lawsuit were provided and took  
 22 place in Orange County, including Defendants' meetings at Mophie's offices with  
 23 Plaintiff Huang and other Mophie employees regarding matters relating to this  
 24 lawsuit.

### 25 PARTIES

26 5. Plaintiff Mophie is, and at all times mentioned herein was, a corporation  
 27 duly incorporated under the laws of the State of California, with its principal place of  
 28 business at 2850 Red Hill Avenue, Suite 128, California.

1           6. Plaintiff Daniel Huang is, and at all times mentioned herein was, an  
2 individual residing in the County of Orange, State of California.

3           7. Plaintiffs are informed and believe that Defendant LOZA & LOZA, LLP  
4 (“Defendant L&L” or “L&L”) is, and at all times mentioned herein was, a law firm  
5 organized as a limited liability partnership under the laws of the State of California,  
6 maintaining an office at 500 N. State College Blvd., Suite 1100, Orange, California.

7           8. Plaintiff is informed and believes that Defendant Julio Loza (“Julio  
8 Loza”) is a registered Patent attorney, licensed to practice law in the State of  
9 California, and at all relevant times has been a shareholder and partner in Defendant  
10 L&L, and is a resident of California, practicing law in the State of California.

11           9. Plaintiff is informed and believes that Defendant Christina S. Loza  
12 (“Christina Loza”) is a registered patent attorney, licensed to practice law in the State  
13 of California, and at all relevant times has been a shareholder and partner in  
14 Defendant L&L, and is a resident of California, practicing law in the State of  
15 California.

16           10. All Defendants (collectively “Defendants”) represented Plaintiffs and  
17 provided legal services and advice to Plaintiffs, and were in an attorney-client  
18 relationship with Plaintiffs at all relevant times to the events set forth in this  
19 Complaint. Among other things, Defendants breached their duties to Plaintiffs by  
20 failing to represent them according to the reasonable standard of care required of  
21 attorneys practicing in the field, causing Plaintiffs harm and damage.

22           **MOPHIE RETAINED LOZA & LOZA TO SAFEGUARD ITS**  
23           **INTELLECTUAL PROPERTY PORTFOLIO**

24           11. Plaintiff Mophie is an award-winning designer and manufacturer of  
25 mobile intelligent devices and accessories. Mophie is widely recognized and highly  
26 acclaimed for its creative designs and innovative solutions, including the “Mophie  
27 Juice Pack” portable battery case certified by Apple Inc. for use with iPhones.  
28

1           12. Plaintiff Daniel Huang is CEO of Plaintiff Mophie, and participated in  
2 the design of Mophie's signature product, the "Mophie Juice Pack" line of portable  
3 battery cases. Plaintiff Huang, along with others, formed Mophie's predecessor,  
4 mStation Audio LLC ("mStation"), which specialized in designing and  
5 manufacturing speakers and ports for Apple's iPod line. In 2007, mStation acquired  
6 Mophie, a then-fledgling company with the novel concept of implanting batteries into  
7 cases for portable electronic devices. The company took the "Mophie" name for its  
8 products and launched its first generation "Mophie Juice Pack" integrated portable  
9 battery case. Today, Mophie designs and manufactures a range of cases and  
10 accessories for the Apple iPhone, iPod and iPad products.

11           13. Plaintiff Huang first met Defendant Julio Loza while Julio Loza was the  
12 intellectual property lawyer for Plaintiff Huang's prior employer. Julio Loza is a  
13 registered patent attorney, and represented himself to be a specialist in intellectual  
14 property matters. Defendant L&L publicly touts its attorneys' expertise in intellectual  
15 property issues. Indeed, Defendants' website boasts that "[w]e work closely with our  
16 clients to develop strong intellectual property portfolios, protect their ideas,  
17 trademarks, and slogans, and provide logical, straightforward solutions for all  
18 intellectual property issues." Defendant L&L's website advertises that Julio Loza  
19 "has broad experience in all aspects of patent, trademark, trade secret, and copyright  
20 protection and enforcement as well as technology licensing and Internet law."  
21 Defendant L&L's website also boasts that Julio Loza "graduated from Loyola Law  
22 School, Los Angeles, where he also served as an adjunct professor of intellectual  
23 property law. He earned his Bachelor and Master Degrees in Electrical Engineering  
24 from Harvey Mudd College, and has work experience as a software developer and  
25 hardware designer. . . . His technical expertise includes wireless communications,  
26 mobile devices, microprocessors, memory devices, software, encryption schemes,  
27 and network architectures."  
28

1           14. When Plaintiff Huang formed Mophie, he retained Defendant L&L, and  
2 specifically Julio Loza, to advise Mophie regarding intellectual property issues,  
3 including development of its intellectual property portfolio, protection of its ideas,  
4 designs, inventions and trademarks, and to provide advice regarding intellectual  
5 property issues. Defendant Julio Loza was to handle the documentation, registration  
6 and protection of Plaintiff Mophie's intellectual property interests.

7           15. Thereafter, Defendant Julio Loza introduced his wife and legal partner,  
8 Defendant Christina Loza, to Plaintiffs. Defendants represented Christina Loza to be  
9 an intellectual property law specialist, with an emphasis on enforcement and  
10 litigation. Defendant L&L's website touts that Christina Loza "has experience in all  
11 areas of intellectual property law including trademarks, patents, copyrights, trade  
12 secrets, domain name disputes, internet law, eBay dispute resolution, as well as, IP  
13 licensing, counseling, and litigation." Defendants' website also promotes the fact that  
14 Christina Loza is a member of the American Intellectual Property Law Association."  
15 It was Plaintiffs' understanding based upon representations made by L&L that  
16 Defendant Christina Loza would handle enforcement and litigation issues for  
17 Mophie.

18           16. Defendants also undertook representation of Plaintiff Huang's interests  
19 in connection with Plaintiff Mophie's intellectual property portfolio. Mr. Huang  
20 sought advice from Defendants regarding his individual rights and interests in  
21 Mophie's intellectual property portfolio. Defendants consulted with Mr. Huang  
22 personally and provided advice to Mr. Huang regarding his individual rights and  
23 interests. Thereby an attorney-client relationship was created between Mr. Huang  
24 and Defendants.

25           17. Defendants failed to provide either Mophie or Mr. Huang with written  
26 retainers or fee agreements in connection with their representation of Plaintiffs in  
27 violation of California Business and Professions Code Section 6148. Defendants also  
28 failed to advise either Mophie or Mr. Huang of potential conflicts between the



1 interests of the company Mophie and the interests of Mr. Huang, as an individual and  
 2 CEO of the company, and instead proceeded with representation of both Plaintiffs  
 3 without obtaining waivers of such conflicts in violation of Rule 3-310(B) of the  
 4 California Rules of Professional Conduct.

#### 5 **DEFENDANTS' BOTCHED ATTEMPTS TO ENFORCE PLAINTIFFS'**

#### 6 **PATENTS**

7 18. Defendants' website boasts: "Our clients rely on Loza & Loza to make  
 8 sure that their competition is not infringing on their intellectual property rights. Loza  
 9 & Loza frequently counsels our clients in various trademark, patent, copyright, and  
 10 domain name disputes (cybersquatting and typosquatting), for both plaintiffs and  
 11 defendants. Loza & Loza attempts to identify and resolve potential infringement  
 12 early so that both parties are in a position to successfully negotiate a licensing  
 13 agreement. However, we are prepared to fully enforce and litigate our client's  
 14 intellectual property rights."

15 19. Plaintiff Mophie retained Defendants to identify and resolve potential  
 16 infringement of its intellectual property rights, and relied upon Defendants to provide  
 17 strategic advice and legal services regarding potential infringements.

18 20. Beginning in Spring 2010, Plaintiff Mophie identified several of its  
 19 competitors' products that potentially infringed upon its patents (and patent  
 20 applications), and brought them to the attention of Defendants. Plaintiffs relied upon  
 21 Defendants to develop a strategy for addressing these potentially infringing products  
 22 that would protect Mophie's intellectual property interests, while not exposing it to  
 23 unnecessary litigation or expense. Plaintiffs emphasized to Defendants that they  
 24 sought to be conservative and cautious in asserting allegations of infringement in  
 25 order to avoid excessively aggressive responses.

26 21. Defendant Christina Loza advised Plaintiffs that Mophie should issue  
 27 notice or demand letters to the companies which were marketing the allegedly  
 28 infringing products, for the purpose of non-judicial resolution. Without adequately

1 counseling Plaintiffs on the ramifications of such letters, Defendant L&L prepared  
2 and delivered patently aggressive “cease and desist” letters that threatened that  
3 Defendants would “proceed to file suit and immediately seek a Temporary  
4 Restraining Order, Preliminary Injunction, monetary damages, and recovery of our  
5 attorneys’ fees and costs.” Under clear and prevailing case law available at the time  
6 the “cease and desist” letters were written, such aggressive language provides legal  
7 basis for the filing of declaratory judgment actions by the letters’ recipients.  
8 Defendant L&L did not tell Plaintiff Huang or Mophie that such “cease and desist”  
9 letters would or could trigger declaratory judgment actions by the letters’ recipients.  
10 No drafts of the “cease and desist” letters were provided to Plaintiff Huang or to  
11 Mophie prior to their delivery. In providing advice to Plaintiffs, Defendants failed to  
12 use such skill, diligence and prudence as members of the legal profession commonly  
13 possess and exercise. Specifically, Christina Loza failed to research, or failed to  
14 comprehend, recent dispositive case law holding that “cease and desist” letters  
15 threatening to bring legal action comprise a “real and justiciable controversy”,  
16 providing the basis for a declaratory judgment action, and failed to draft the “cease  
17 and desist” letters to avoid triggering declaratory judgment actions.

18 22. Plaintiffs had specifically instructed Defendants that they wanted to  
19 avoid litigation and wanted to take conservative steps in enforcing Mophie's  
20 intellectual property rights. Prior to sending the aggressive and threatening “cease  
21 and desist” letters, Defendant Christina Loza failed adequately to advise Plaintiffs  
22 that there was a likelihood that the recipients of the letters would file declaratory  
23 judgment actions. Further, Christina Loza misrepresented to Plaintiffs that the  
24 language of the letters to competitors would not result in any challenges to the  
25 validity of Plaintiffs’ patents. Defendants knew or should have known that the overly  
26 aggressive language of the letters increased the likelihood of Plaintiffs being sued in  
27 declaratory judgment actions, and should have informed Plaintiffs of that risk.  
28

1 Defendants' conduct fell below the standard of care of attorneys practicing in the  
2 field.

3 23. Defendants also proceeded with enforcement efforts based solely upon  
4 certain Design Patents (discussed in further detail below), rather than waiting for the  
5 issuance of the utility patents whose applications remained pending. As discussed  
6 below, Defendants had failed to explain to Plaintiffs the nature of the design patent  
7 protection and that such patents do not provide protection to functional elements of  
8 Mophie's products. In connection with the "cease and desist" letters, Defendants also  
9 neglected to explain to Plaintiffs that, by attempting to enforce the Design Patents,  
10 they would expose themselves to legal challenges to the validity of the Design  
11 Patents themselves.

12 24. In yet another error, Defendants' "cease and desist" letters mistakenly  
13 attributed ownership of the Design Patents to Plaintiff Mophie, when in fact  
14 Defendants had applied for the patents, and the patents had issued, in the name of Mr.  
15 Huang. Thus, the "cease and desist" letters' assertions that the patents were owned  
16 by Mophie were demonstrably false and misleading.

17 25. Defendant C. Loza sent the following "cease and desist" letters on behalf  
18 of Plaintiff Mophie:

19 a. 5/6/2010 to Ilene Berman/Airport Wireless re "Power Packs"  
20 iPhone battery packs;

21 b. 6/3/2010 to Joseph Carrillo and Sumeet Gupta/Phonesuit re "Mili"  
22 and "Mili Pro" iPhone battery packs;

23 c. 6/8/2010 to Sashi Reddy/Case-Mate Georgia, LLC re "Fuel Lite"  
24 iPhone battery packs; and

25 d. 6/16/2010 to Ed Kang, Hali-Power Inc. re "Mili" iPhone battery  
26 packs. Copies of these "Cease and Desist" Letters are attached hereto as Exhibit A.

27 26. Each of the "cease and desist" letters erroneously identified Plaintiff  
28 Mophie as the owner of the patents allegedly infringed, claimed that the competitive



1 product infringed on the Design Patents, and threatened immediate legal action  
2 against the recipients.

3 27. As a direct result of Defendants' improper and negligent "cease and  
4 desist" letters, Mophie was sued by two of its competitors seeking declaratory  
5 judgments of non-infringement and invalidity of the Design Patents.

6 28. The first case, Case-Ari, LLC d/b/a Case-Mate v. Mophie, Inc., 1:10-cv-  
7 1874-CAP (the "Case-Mate Action"), was filed in the United States District Court  
8 "U.S.D.C.") for the Northern District of Georgia, Atlanta Division on June 17, 2010.  
9 Defendants and Plaintiffs were served with the complaint in the Case-Mate Action  
10 immediately thereafter.

11 29. After the Case-Mate Action was filed, Defendants advised Plaintiffs that  
12 Christina Loza was inexperienced in actual litigation, but nevertheless assured  
13 Plaintiffs that she had the expertise to handle the defense of the lawsuit. Thereafter,  
14 Defendant Christina Loza advised Plaintiffs to file a "placeholder" lawsuit in the  
15 local United States District Court. Defendant Christina Loza told Plaintiffs that this  
16 action would enable Plaintiffs to force any litigations filed elsewhere to be transferred  
17 to the California venue, and would give Plaintiffs a strategic advantage in any future  
18 litigations. It was at this time that Defendants first disclosed that the Design Patents  
19 had been issued in Plaintiff Huang's name and that Plaintiff Huang would need to be  
20 a party to any enforcement actions. On June 24, 2010, Defendants filed a complaint  
21 styled "Daniel Huang v. GC Technology, LLC d/b/a Phonesuit, Hali-Power Inc. and  
22 Case-Ari, LLC d/b/a Case-Mate, 2:10-cv-04705-CAS-VBK in the U.S.D.C. for the  
23 Central District of California (the "Huang Action"). Prior to its dismissal, Plaintiffs  
24 incurred substantial legal fees in connection with this action, in an amount not less  
25 than \$50,000. But for Defendants' negligent representation of Plaintiffs in sending  
26 "cease and desist" letters which Defendants knew or should have known would result  
27 in declaratory judgment actions, Plaintiffs would not have suffered the financial  
28 losses and loss of reputation in the market relating to this lawsuit.

1           30. On June 30, 2010, Mophie's competitor, Hali-Power, Inc., filed a lawsuit  
2 styled Hali-Power, Inc. v. Mophie, Inc., 1:10-cv-00773-GLS-RFT, in the U.S.D.C.  
3 for the Northern District of New York, Albany Division, and thereafter served the  
4 complaint on Plaintiff Mophie and Defendants. As with the Case-Mate Action, the  
5 Hali-Power Action also cited the aggressive "cease and desist" letters as precipitating  
6 the lawsuit. In addition, however, the complaint in the Hali-Power Action also  
7 pointed to the complaint in the Huang Action as providing further evidence of a "real  
8 and justiciable controversy" between the parties.

9           31. Each of the complaints in the Case-Mate Action and the Hali-Power  
10 Action sought declaratory judgment of non-infringement and declaratory judgment of  
11 invalidity of the Design Patents. The complaints each asserted that the Design  
12 Patents were invalid based upon extensive lists of prior art in registered patents and  
13 design patents.

14           32. Plaintiff Mophie sought to negotiate settlement of the Hali-Power  
15 Action, and was forced to expend significant financial resources in pursuit of this  
16 negotiated resolution. Prior to its settlement, Plaintiff Mophie incurred more than  
17 \$100,000 in legal fees and costs associated with the Hali-Power Action, and  
18 significant loss of reputation in the market.

19           33. Case-Mate, on the other hand, actively prosecuted its claims, including  
20 alleging that Plaintiffs Mophie and Mr. Huang engaged in fraud and patent abuse as a  
21 result of the confusion over the name in which the patents were issued. Prior to its  
22 settlement, Plaintiffs incurred no less than \$65,000 in legal fees and costs defending  
23 this action.

24           34. Defendants' ill-fated attempt to enforce the caused Plaintiffs to be sued  
25 in two actions in foreign jurisdictions which threatened to invalidate the Design  
26 Patents and expose Plaintiffs to potential liability for fraud, abuse of patent claims,  
27 and caused Plaintiff Huang to become personally involved in a third lawsuit in  
28 California federal court. The legal expenses incurred by Plaintiffs in connection with

1 these three unnecessary and avoidable lawsuits caused solely by Defendants' legal  
2 malpractice exceeded \$215,000.

3 **DEFENDANTS IMPROPERLY MISREPRESENTED FACT THAT THEY**  
4 **SOUGHT PATENTS IN MR. HUANG'S NAME RATHER THAN IN THE**  
5 **NAME OF MOPHIE**

6 35. Defendant L&L's website asserts: "Loza & Loza assists clients in  
7 creatively finding the ideal way to protect their inventions and enforce their rights.  
8 We focus on our clients' business plan in order to see how the client's patentable  
9 technology fits into the big picture. This helps us to create a strategy for a strong  
10 portfolio that is attractive to investors and licensees."

11 36. Another of the intellectual property issues that Mophie retained  
12 Defendants to handle was the procurement of patents for its inventions and designs.  
13 Specifically, Plaintiff Mophie sought the highest value protection available for its  
14 signature products, battery packs, holsters, and processing and interface platforms for  
15 use with mobile devices, i.e., the products marketed as the "Mophie Juice Packs".  
16 Plaintiffs relied upon Defendants to advise them in creating a strategy for a strong  
17 intellectual property portfolio, including obtaining the most appropriate and effective  
18 patents.

19 37. Defendants advised Plaintiffs to seek both utility and design patents for  
20 the battery pack inventions, and filed the following applications for patents related to  
21 the "Mophie Juice Pack" products:

22 a. 1/8/2008 Provisional Utility Patent Application: 61/021/897 for  
23 Battery Pack and Holster for Mobile Devices (the "897 Patent Application");

24 b. 1/21/2009 Utility Patent Application: 12/357/262 for Battery  
25 Pack, Holster, and Extendible Processing and Interface Platform for Mobile Devices  
26 (superseding prior '897 Patent application) (the "262 Patent Application");

27 c. 3/30/2009 Design Patent Application: D616360 for Contoured  
28 Battery Pack (the "360 Design Patent"); and

1                   d.     3/30/2009 Design Patent Application: D616361 for Contoured  
2 Battery Pack (the "361 Design Patent").

3             38.     Without adequately counseling Plaintiffs, Defendants filed applications  
4 for each of these patents in the name of Plaintiff Huang as sole inventor and sole  
5 owner, rather than in the name of the company, Plaintiff Mophie. Defendant Julio  
6 Loza, however, had been well aware that Mophie wanted all of its intellectual  
7 property issued directly in its name.

8             39.     Defendants did not advise Plaintiffs of the various legal issues involved  
9 in determining the proper party for ownership of the patented inventions or the  
10 potential risks to the company or to Plaintiff Huang from seeking patents for the  
11 products in Mr. Huang's individual capacity, including but not limited to the threat of  
12 litigation against and liability of Mr. Huang in his personal capacity, potential tax  
13 issues and potential "alter ego" allegations in connection with corporate litigations  
14 and liabilities, which Defendants knew or should have known. Nor did Defendants  
15 inform Plaintiffs of the potential conflict of interests between Mr. Huang and Mophie  
16 with respect to this issue, which included the potentially adverse financial interests of  
17 the two parties over ownership of these highly valuable intellectual property assets,  
18 i.e., the patents.

19             40.     On May 25, 2010, the '360 and '361 Design Patents issued in the name of  
20 Mr. Huang.

21             41.     At the very least, the applications for the patents in the name of Mr.  
22 Huang should have been accompanied by a written transfer of the patent rights to  
23 Plaintiff Mophie. Defendants did not advise Plaintiffs of the need for a written  
24 transfer of the patents from Mr. Huang to Mophie, and did not prepare or file such a  
25 document on Plaintiffs' behalf. Defendants had a duty to Plaintiff Mophie to ensure  
26 that the patents were transferred to Mophie in a timely manner. Defendants had a  
27 duty to take action in the interest of Plaintiff Mophie, including advising Mr. Huang  
28 of the company's interests and/or informing other officers of Mophie of the need to

1 transfer the patents. Defendants failed to take any such action, and failed to prepare  
2 written transfer agreements for the patents applied for in Plaintiff Huang's name.

3 42. Defendants' above-described conduct fell far below the standard of care  
4 in the preparation of the patent applications, including: failing to research and  
5 understand the law relating to employer ownership of employee inventions; failing to  
6 advise Plaintiffs regarding the patent applications being filed solely in the name of  
7 Mr. Huang; and failing to advise Plaintiff Mophie (if necessary, through someone  
8 other than Mr. Huang) of the need to transfer the patents to Plaintiff Mophie; and  
9 failing to prepare written transfer agreements for the patents applied for in Plaintiff  
10 Huang's name to be transferred to the company, Plaintiff Mophie.

11 43. As discussed above, Defendants then improperly issued aggressive and  
12 threatening "cease and desist" letters to Mophie's competitors alleging infringement  
13 of the Design Patents, without fully advising Plaintiffs of the ramifications of this  
14 course of action, without properly analyzing whether the allegedly infringing  
15 products did, in fact, infringe upon the Design Patents, and misrepresenting to  
16 Mophie's competitors that the Design Patents had been issued in the name of Mophie,  
17 when in fact, they had been sought by Defendants in the name of Plaintiff Huang.

18 44. When Plaintiffs learned that patents had been sought, and some had been  
19 issued, in Mr. Huang's name rather than the company name, Defendants Christina  
20 Loza and Julio Loza, intentionally or recklessly, misrepresented to Plaintiffs that the  
21 patents had been transferred from Mr. Huang to Plaintiff Mophie. Contrary to this  
22 representation, however, Defendants had never prepared written transfer agreements  
23 between the Plaintiffs.

24 45. The standard of care for attorneys required Defendants to candidly  
25 advise Plaintiffs that they had applied for the patents for the wrong party in the first  
26 place, and then that they had failed to prepare written transfers of the patents  
27 improperly registered to Mr. Huang over to Mophie. Defendants failed to exercise a  
28 professional standard of care by: failing to advise Plaintiffs regarding the appropriate



1 party for the patent applications; by applying for patents in Mr. Huang's name rather  
2 than in Mophie's name; by failing to prepare and file written transfer documents for  
3 the patent issued in Plaintiff Huang's name; by misrepresenting that the patents had  
4 been transferred from Plaintiff Huang to Plaintiff Mophie when in fact they had not  
5 been transferred.

6 46. As a result of Defendants' wrongful conduct, Plaintiffs have incurred  
7 attorneys' fees associated with preparing written documents transferring the patents to  
8 Plaintiff Mophie. In addition, as discussed in further detail below, Plaintiffs have  
9 incurred legal fees in connection with lawsuits precipitated, in part, by Defendants'  
10 failure to apply for the patents in the name of, or thereafter to transfer them to,  
11 Plaintiff Mophie.

12 **DEFENDANTS MISHANDLED PLAINTIFFS' DESIGN PATENT**  
13 **APPLICATIONS**

14 47. In addition to failing to effectuate transfers of the patents and patent  
15 applications to Mophie, Defendants also failed to consult with Plaintiffs prior to filing  
16 the patent applications with the Patent and Trademark Office ("PTO") regarding the  
17 legal issues of inventorship and ownership of patents, and the adverse consequences  
18 of failing to disclose all inventors' names to the PTO. Defendants did not seek or  
19 obtain from Plaintiffs the information necessary to correctly determine the legally  
20 appropriate name of all inventors under which the patent applications should have  
21 been filed, and omitted the name of a co-inventor on two of the patent applications.  
22 Had Defendants undertaken professionally standard efforts to investigate the facts  
23 and advise their clients regarding the issues presented by the patent applications, they  
24 would have learned that Plaintiff Daniel Huang was not the sole inventor of products  
25 covered by the '360 Design Patent and the '262 Utility Patent application. Rather,  
26 Defendants prepared the patent applications without even raising the question of  
27 inventorship or informing Plaintiffs that they would identify Daniel Huang as the sole  
28 inventor and owner of the patents, much less explaining to Plaintiffs the issues and

1 seeking the information necessary to determine the proper inventors to identify in the  
2 applications. As a direct result of Defendants' misconduct in failing to identify the  
3 co-inventor in the application, both the '360 Design Patent and the '262 Utility Patent  
4 application have been rendered vulnerable to challenge to their patentability.  
5 Defendants' misconduct has resulted in myriad other adverse consequences for  
6 Plaintiffs including but not limited to confusion in the market, the necessity of  
7 expending additional legal fees to correct the mistakes on the  
8 issued patents and/or pending patent applications, and the appearance of impropriety  
9 before the PTO.

10 48. Furthermore, Defendants deficiently prepared the Design Patent  
11 applications and misrepresented to Plaintiffs the nature of the patent protection which  
12 could, under law, be afforded to Plaintiffs' inventions by the Design Patents.  
13 Defendants sought and obtained two Design Patents relating to the "Mophie Juice  
14 Pack" products, the '360 Design Patent and the '361 Design Patent. In proceeding  
15 with the applications for the Design Patents, Defendants breached their duties to  
16 Plaintiffs by failing fully to advise Plaintiffs of the nature of the protection available  
17 under a design patent limited to aesthetic features, rather than to functionality, which  
18 Defendants knew or should have known would provide limited protection to  
19 Mophie's products due to the primarily functional nature of the products.

20 49. Instead, Defendants misrepresented to Plaintiffs that they had succeeded  
21 in obtaining patents that would adequately protect Mophie's intellectual property  
22 interests in the "Mophie Juice Pack" products and, as described above, advised  
23 Plaintiffs to undertake aggressive enforcement actions based upon the design patents,  
24 which Defendants knew or should have known would result in harm to Plaintiffs.

25 50. Additionally, although Plaintiffs had retained Defendants to advise them  
26 regarding a strategy for protecting their intellectual property portfolio, Defendants  
27 failed to advise Plaintiffs of the one-year period in which a party may apply for patent  
28 protection after the first sale of an invention, known as the 'On-Sale Bar'. In

1 preparing the '360 Design Patent application, Defendants failed to properly research  
2 the facts supporting the Design Patent applications, or to advise Plaintiffs to provide  
3 such facts, that would determine the 'on-sale date' of the invention presented in the  
4 '360 Design Patent. Defendants' failure to advise Plaintiffs of the "On-Sale" statutory  
5 bar, failure to properly consult with Plaintiffs regarding the "On-Sale" statutory bar in  
6 connection with the '360 Design Patent application, and failure to provide accurate  
7 information in the '360 Design Patent Application has jeopardized the patent  
8 protection afforded by the '360 Patent.

9 51. Defendants' conduct in this regard fell below the standards for a  
10 reasonable patent attorney practicing in the area, and caused Plaintiffs harm by  
11 placing the '360 Design Patent and the '262 Patent Application at risk of legal  
12 challenges to patentability thereby robbing Plaintiffs of the full value of their property  
13 rights under the law, in addition to incurring on-going fees for additional legal  
14 services related to defending Plaintiffs' intellectual property rights which were  
15 jeopardized by Defendants' malfeasance, including but not limited to having to seek  
16 permission from the PTO to amend the '262 Patent Application to identify the co-  
17 inventor.

18 **LOZA & LOZA INCOMPETENTLY REPRESENTED MOPHIE IN ITS**  
19 **TRADEMARK APPLICATIONS**

20 52. Defendants' website acknowledges: "A strong IP portfolio has immense  
21 value to an individual or company. Accordingly, obtaining and maintaining IP is and  
22 should be an essential, "top-priority" business practice. For example, if a patent or  
23 trademark is weak or acquired in an improper way, it can certainly affect eventual  
24 licensing of the IP, the value of the IP, the sale of the company, and may affect the  
25 validity of the IP when it is under dispute or being litigated." The website further  
26 promises that: "Loza & Loza excels at being in touch with our clients' objectives,  
27 procuring high quality, valuable IP, and maintaining that IP so that it remains strong,  
28 valuable, and valid."

1        53. Among other things, Plaintiff Mophie retained Defendants, and relied  
2 upon them, to “obtain and maintain” its intellectual property portfolio, including  
3 specifically applying for registration of Plaintiff Mophie's patents, trademarks and  
4 copyrights. Plaintiff Mophie relied upon Defendants to procure the “high quality,  
5 valuable IP” they promised.

6        54. Among the intellectual property issues that Mophie retained Defendants  
7 to handle was the procurement of appropriate trademarks for the business and its  
8 products. Specifically, Plaintiff Mophie sought the highest value protection available  
9 for its signature product line, the “Mophie Juice Pack.”

10       55. In November 2007, Defendants undertook to file a trademark application  
11 for the name of this product, and recommended that trademark registration be sought  
12 solely for the words “Juice Pack”, not the full name “Mophie Juice Pack.” On or  
13 about November 11, 2007, Christina Loza filed the application on behalf of Plaintiff  
14 Mophie to register the trademark “Juice Pack” for use in connection with, among  
15 other things, batteries and battery packs.

16       56. In preparing the application, Defendants failed to use such skill,  
17 prudence and diligence as members of the legal profession commonly possess and  
18 exercise in preparing trademark applications, including by: failing to competently  
19 research the types of names that reasonably could be expected to be given trademark  
20 status for battery-related products; failing to competently analyze the likelihood that  
21 the “Juice Pack” name would be registered by the U.S. PTO; and failing to research  
22 and assess previously registered names similar to “Juice Pack” that could prevent the  
23 PTO from registering the mark.

24       57. Defendants also failed to advise Mophie of the risks to its intellectual  
25 property rights if the application was rejected. Defendants also failed to inform  
26 Plaintiffs that altering the application to the full term “Mophie Juice Pack” would  
27 significantly reduce the risk of rejection by the PTO, and that this was a more  
28 reasonable, safer alternative course of action. Because Defendants did not fully

1 advise Mophie of the issues and risks associated with the "Juice Pack" application or  
2 the merits of an alternative "Mophie Juice Pack" application, Mophie was not  
3 provided the opportunity to and did not provide its full and informed consent for  
4 Defendants to proceed with the application for the mark "Juice Pack".

5 58. Through a PTO Office Action dated March 31, 2008, the PTO refused  
6 registration of the "Juice Pack" term. According to the PTO, the "Juice Pack"  
7 application was rejected because of a likelihood of confusion with previously  
8 registered trademarks and design marks which contained the term "Juice" in  
9 connection with battery products. Had Defendants used such skill, prudence and  
10 diligences as members of the legal profession commonly exercise in preparing  
11 trademark applications, Defendants would have discovered the prior-registered marks  
12 utilizing the word "Juice" in connection with battery products. Defendants should  
13 have known and advised Plaintiffs that the PTO would reject the application for the  
14 phrase "Juice Pack" and should have recommended the application be sought for the  
15 full name of the product, the "Mophie Juice Pack." On information and belief, had  
16 the application been filed for "Mophie Juice Pack", it would have registered by the  
17 PTO, and a reasonable attorney practicing in the field of intellectual property would  
18 have done so.

19 59. In June 2008, Defendants filed a response to the PTO Office Action,  
20 arguing that the "Juice Pack" mark did not create a likelihood of confusion with the  
21 previously registered "Juice" marks. Upon information and belief, Defendants failed  
22 to use such skill, prudence and diligence as members of the legal profession  
23 commonly possess and exercise in responding to PTO Office Actions by presenting  
24 ineffective and unpersuasive arguments to the PTO, which a reasonable attorney  
25 practicing in the area would not have done. By Office Action dated July 2008,  
26 Defendants' arguments were rejected and the PTO's refusal of the "Juice Pack"  
27 application became "final."  
28



1           60. On or about February 13, 2009, the trademark application for “Juice  
2 Pack” was abandoned for failure to respond to the second PTO Office Action prior to  
3 January 1, 2009. Defendants never informed Mophie that it had the opportunity to  
4 respond or appeal the PTO's July 2008 Office Action, which a reasonable attorney  
5 practicing in the field would have done. Nor did Defendants advise Mophie that the  
6 trademark application could have been revised to include the full term “Mophie Juice  
7 Pack”. Instead, Defendants allowed the time for response to lapse and the application  
8 to be deemed “abandoned.”

9           61. Because Plaintiffs failed to inform Mophie of the PTO's rejection and the  
10 subsequent abandonment of the trademark application, Mophie did not attempt to  
11 register any other trademark, such as “Mophie Juice Pack”, or otherwise protect its  
12 intellectual property rights.

13           62. On or about October 4, 2010, after terminating Defendants' services and  
14 retaining new intellectual property counsel, Mophie filed applications for registration  
15 of various trademarks utilizing the phrase “Mophie Juice Pack.” Because the original  
16 action was “abandoned,” these trademark applications will not swear back to the  
17 November 2007 date that Mophie's original trademark application was filed. As a  
18 direct result of Defendants' wrongful conduct, not only has Mophie incurred  
19 additional legal fees in connection with the second trademark application, but it has  
20 lost three years of priority in its mark, rendering the marks vulnerable to challenges  
21 by similar marks registered in the interim period between November 2007 and  
22 October 2010.

23           63. After terminating Defendants' services, Plaintiffs also learned that  
24 several of the trademark applications filed by Defendants on behalf of Mophie had  
25 actually been filed under an incorrect corporate name. Over the course of the  
26 representation, Defendants negligently filed some nine trademark applications on  
27 behalf of “mStation Audio Inc., a California Corporation.” Yet, no such corporation  
28 exists, or has ever existed. From May 2005, through the date of termination of

1 Defendants' services, the entity name for Plaintiff Mophie has been "mStation  
2 Corporation, a California Corporation." Yet, Plaintiff filed the following applications  
3 for registration of Mophie trademarks in the name of a non-existent company:

4 a. Registration Number 3227723, Trademark Application for  
5 "MOPHIE", filed June 8, 2006, Owner "mStation Audio, Inc. Corporation  
6 California";

7 b. Registration Number 3227724, Trademark Application for  
8 "RELO", filed June 8, 2006, Owner "mStation Audio, Inc. Corporation California";

9 c. Registration Number 3227725, Trademark Application for "M  
10 MOPHIE", filed June 8, 2006, Owner "mStation Audio, Inc. Corporation California";

11 d. Registration Number 3400661, Trademark Application for  
12 "WRAPTOR", filed December 5, 2006, Owner "mStation Audio, Inc. Corporation  
13 California";

14 e. Application Serial Number 77057293, Trademark Application for  
15 "MUEVA", filed December 5, 2006, Owner "mStation Audio, Inc. Corporation  
16 California";

17 f. Registration Number 3681443, Trademark Application for "M",  
18 filed December 10, 2007, Owner "mStation Audio, Inc. Corporation California";

19 g. Registration Number 3681444, Trademark Application for "M",  
20 filed December 10, 2007, Owner "mStation Audio, Inc. Corporation California";

21 h. Application Serial Number 77348524, Trademark Application for  
22 "M", filed December 10, 2007, Owner "mStation Audio, Inc. Corporation  
23 California"; and

24 i. Application Serial Number 77348530, Trademark Application for  
25 "M", filed December 10, 2007, Owner "mStation Audio, Inc. Corporation  
26 California".

27 64. Defendants had a duty to conduct reasonable investigation to ensure that  
28 the information on the Trademark applications it filed on Plaintiff's Mophie's behalf

1 was accurate, and Plaintiff Mophie relied upon Defendants to prepare its Trademark  
2 applications accurately. In filing these Trademark applications in the incorrect name,  
3 Defendants not only exhibited gross professional negligence (e.g., they repeatedly got  
4 the name of their own client wrong in formal applications to the PTO), they  
5 jeopardized Plaintiff Mophie's significant intellectual property rights in these marks.  
6 Plaintiff must undergo the expense of having the registrations and applications  
7 transferred to the correct name.

8 **LOZA & LOZA'S NEGLIGENCE NECESSITATES AUDIT OF MOPHIE'S**  
9 **INTELLECTUAL PROPERTY PORTFOLIO**

10 65. While representing Plaintiffs, Defendants had a duty to maintain in a  
11 professional manner files relating to legal services provided to Plaintiffs. After  
12 Plaintiffs terminated Defendants' representation, Defendants had a duty to deliver to  
13 Plaintiffs full and complete copy of the files relating to Defendants' work on  
14 Plaintiffs' matters.

15 66. Upon termination of the representation, Plaintiffs requested that  
16 Defendants deliver to them copies of all documents and files maintained by  
17 Defendants with respect to Plaintiffs and their legal matters.

18 67. The files delivered by Defendants to Plaintiffs were disorganized and  
19 incomplete, in breach of Defendants' ethical obligations to Plaintiffs. Indeed, the files  
20 were so disorganized and incomplete that Plaintiffs are unable to ascertain the status  
21 of Mophie's intellectual property portfolio, including the status of the various  
22 trademark, copyright and patent applications and registrations undertaken by  
23 Defendants on Plaintiffs' behalfs.

24 68. As a direct and proximate result of Defendants' mismanagement of  
25 Mophie's intellectual property portfolio and their failure to maintain files relating  
26 thereto in a professional manner, Mophie must now undertake an audit of its  
27 intellectual property portfolio, including searching for all copyright, trademark, patent  
28 and other intellectual property interest applications and registrations filed by

1 Defendants on Plaintiffs' behalves to determine the status of each, and whether any  
2 need additional filings, extensions, appeals and the like. This audit is substantially  
3 more extensive that would regularly be undertaken by replacement counsel, and is  
4 specifically necessitated by the disorganized and incomplete state of the files  
5 delivered by Defendants. Plaintiff Mophie has retained replacement intellectual  
6 property counsel for the purpose of performing such an audit. The estimated cost of  
7 the audit is \$32,000.

8 **FIRST CAUSE OF ACTION**

9 (Breach Of Fiduciary Duty)

10 (By All Plaintiffs Against All Defendants)

11 69. Plaintiffs hereby reallege paragraphs 1 through 68 inclusive, which are  
12 incorporated by reference as though set forth in full herein.

13 70. Defendant L&L was at all relevant times a law firm engaged in the  
14 practice of law in the state of California.

15 71. Defendant J. Loza is a registered patent attorney, licensed to and  
16 practicing law in the State of California, and at all relevant times has been a  
17 shareholder and partner in Defendant L&L.

18 72. Defendant C. Loza is a registered patent attorney, licensed to and  
19 practicing law in the State of California, and at all relevant times has been a  
20 shareholder and partner in Defendant L&L.

21 73. Plaintiff Mophie employed Defendants to provide legal counsel and  
22 services regarding its intellectual property portfolio, and thereby an attorney-client  
23 relationship was created between Plaintiff Mophie and Defendants.

24 74. Defendants also undertook representation of Plaintiff Huang's interests  
25 in connection with Plaintiff Mophie's intellectual property portfolio. Mr. Huang  
26 sought advice from Defendants regarding his individual rights and interests in  
27 Mophie's intellectual property portfolio. Defendants consulted with Mr. Huang  
28 personally and provided advice to Mr. Huang regarding his individual rights and

1 interests. Thereby an attorney-client relationship was created between Mr. Huang  
2 and Defendants.

3 75. By virtue of their confidential attorney-client relationship and  
4 Defendants' superior knowledge, it was reasonable for Plaintiffs to repose trust and  
5 confidence in Defendants, and each of them, and a fiduciary relationship thereby  
6 existed whereby Plaintiffs reasonably relied on the integrity, fidelity and honesty of  
7 Defendants. As such, and by virtue of their status of attorneys to Plaintiffs,  
8 Defendants owed fiduciary duties to Plaintiffs to act with the highest degree of  
9 loyalty, good faith and care in accordance with the highest of legal ethical standards,  
10 and to disclose fully all material facts that could bear upon the subject matter of  
11 Plaintiffs' relationship with Defendants and the subject matter of the retention. In  
12 addition, Defendants owed all customary professional and fiduciary duties to  
13 Plaintiffs, including a duty of loyalty to Plaintiffs not to act adversely to their  
14 interests and to refrain from taking any action or omitting to take any action which is  
15 likely to result in loss, injury, damage, harm or detriment to Plaintiffs.

16 76. By the conduct alleged above, Defendants have breached their fiduciary  
17 duties to Plaintiffs, including by:

- 18 a. Failing to provide a written retainer and fee agreement;
- 19 b. Failing fully and faithfully to advise Plaintiffs of potential  
20 conflicts of interests posed by Defendants' representation of both Plaintiff Mophie  
21 and Plaintiff Huang;
- 22 c. Failing fully and faithfully to advise Plaintiff Mophie regarding  
23 the trademark application filed by Defendants on its behalf, which was "abandoned"  
24 by Defendants as of February 13, 2009;
- 25 d. Failing fully and faithfully to advise Plaintiffs regarding the issues  
26 of inventorship and ownership of patents;
- 27 e. Failing fully and faithfully to advise Plaintiffs regarding  
28 Defendants' filing of patent applications on behalf of Plaintiff Huang;



1           f.       Failing fully and faithfully to advise Plaintiffs regarding  
2 Defendants' failure to prepare and file written documentation of transfer of patents  
3 from Plaintiff Mophie to Plaintiff Huang;

4           g.       Failing fully and faithfully to advise Plaintiffs regarding the On-  
5 Sale statutory bar for patent applications;

6           h.       Failing fully and faithfully to advise Plaintiffs of the risks  
7 associated with the aggressive "cease and desist" letters prepared by Defendants,  
8 including that they would be likely to precipitate costly declaratory judgment actions  
9 against Plaintiffs seeking determinations of non-infringement and invalidity of the  
10 asserted patents; and

11          i.       Failing to maintain files relating to legal services provided to  
12 Plaintiffs in a professionally organized and complete manner, and failing to deliver to  
13 Plaintiffs such files upon termination of the relationship.

14       77.   As a direct and proximate result of such conduct, Plaintiffs have suffered  
15 economic damage in an amount yet to be determined, but including but not limited to  
16 loss of value of Mophie's intellectual property, attorneys' fees, costs and costs of suit  
17 herein. In addition, Plaintiffs will be required to undertake an audit of their  
18 intellectual property portfolio in order to protect their intellectual property rights.

19       78.   The conduct of Defendants, and each of them, as alleged above, was  
20 grossly negligent, unconscionable, fraudulent, oppressive, malicious and done  
21 intentionally or in conscious disregard of Plaintiffs' rights and Defendants' fiduciary  
22 obligations, and in order to protect themselves and further their own interests at  
23 Plaintiffs' expenses and to their detriment, so as to justify an award of punitive  
24 damages.

25 ///

26 ///

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**SECOND CAUSE OF ACTION**

(Legal Malpractice – Trademark and Patent Application Issues)

(By All Plaintiffs Against All Defendants)

79. Plaintiffs hereby reallege paragraphs 1 through 78 inclusive, which are incorporated by reference as though set forth in full herein.

80. Defendants, and each of them, hold themselves out as specialists in intellectual property matters, including patent law.

81. Defendants were, at all times relevant to this complaint, in an attorney-client relationship with Plaintiffs.

82. In handling Plaintiffs' legal matters, Defendants had a legal duty to exercise that degree of learning, skill, diligence and prudence commonly possessed and exercised by attorneys of ordinary skill practicing under similar circumstances. Moreover, by holding themselves out as "specialists" in intellectual property law, including patent law, Defendants had a duty to apply the learning, skill, diligence and prudence commonly possessed and exercised by intellectual property and patent law specialist attorneys. In addition, Defendants owed all customary professional and fiduciary duties to Plaintiffs, including a duty of loyalty to Plaintiffs not to act adversely to their interests and to refrain from taking any action or omitting to take any action which is likely to result in loss, injury, damage, harm or detriment to Plaintiffs.

83. At all times relevant hereto, Defendants failed to use such learning, skill, prudence and diligence as members of the legal profession commonly possess and exercise in provision of legal counsel and services for Plaintiff Mophie, in the manner alleged above. Such acts of malpractice included:

a. Incompetently handling Plaintiff Mophie's application for trademark registration including by: seeking registration of only "Juice Pack" instead of the full "Mophie Juice Pack" name; presenting ineffective and unpersuasive arguments in response to the first PTO Office Action non-finally rejecting the

1 application; failing to advise Plaintiff Mophie to revise the application to include the  
2 full "Mophie Juice Pack" name; failing to advise Mophie of its legal options after the  
3 second PTO Office Action and allowing the application to be deemed "abandoned";  
4 and failing to advise Plaintiff Mophie to seek registration of a trademark for "Mophie  
5 Juice Pack", instead allowing significant time to elapse which prejudiced Mophie's  
6 eventual application for the registration of the trademark.

7 b. Filing applications for registration of nine of Mophie's trademarks  
8 in the name of a non-existent corporate entity;

9 c. Failing to advise Plaintiffs of the potential conflicts of interest and  
10 legal ramifications of Defendants' filing of the '897 and '262 Patent Applications in  
11 the name of Plaintiff Huang rather than Plaintiff Mophie.

12 d. Incompetently handling the '360 and '361 Design Patent issues,  
13 including by: failing to fully advise Plaintiffs of the On-Sale statutory bar and failing  
14 to properly research the facts underlying the On-Sale statutory bar in the '360 Design  
15 Patent application; failing to fully advise Plaintiffs regarding the issues of  
16 inventorship of patents and failing to properly research the facts underlying the  
17 invention subject of the '360 Design Patent and the '262 Patent Application; failing to  
18 identify the co-inventor of the '360 Design Patent and the '262 Patent Application;  
19 applying for registration of the '360 and '361 Design Patents in the name of Mr.  
20 Huang rather than Mophie without having advised either Plaintiffs of the potential  
21 conflicts of interest and the legal ramifications of this decision; failing adequately to  
22 advise Plaintiffs of the need to transfer the Design Patents to Mophie and failing to  
23 prepare written documentation of such transfers; falsely representing to Plaintiffs that  
24 the Design Patents had been transferred to Plaintiffs when in fact they had not been  
25 so transferred; and failing fully and faithfully to advise Plaintiffs regarding the  
26 limitations of the Design Patents as they applied to the "Mophie Juice Pack" product.

1           84. As a result of the actions, errors and omissions set forth above,  
2 Defendants have breached their legal duties to Plaintiffs, have been professionally  
3 negligent and have committed professional malpractice.

4           85. But for Defendants' professional malpractice, Plaintiff Mophie would  
5 have succeeded in obtaining valuable trademark registration for the "Mophie Juice  
6 Pack" mark years earlier than the eventual registration; would not need to incur fees  
7 in effectuating transfer of nine trademarks and applications from a non-existent  
8 company; would have received registration of the '360 and '361 Design Patents in its  
9 name or would have had them transferred to itself prior to the issuance of the "cease  
10 and desist" letters; would not need to undergo additional fees and costs to prepare  
11 documentation transferring those patents to itself; would have an enforceable '360  
12 Design Patent; would not have incurred additional expense in amending the '262  
13 Patent Application to identify a co-inventor; would not need to undertake an audit of  
14 its intellectual property portfolio to protect its interests against further harm resulting  
15 from Defendants' incompetence and malpractice; and would not have incurred  
16 excessive legal fees and costs relating to unnecessary and ineffectual actions  
17 undertaken by Defendants and legal fees and costs incurred in connection with  
18 correcting mistakes made by Defendants.

19           86. But for Defendants' professional malpractice, Plaintiff Huang would not  
20 have had the '360 and '361 Design Patents improperly issued in his name alone or  
21 would have had such Design Patents transferred to Plaintiff Mophie prior to the  
22 issuance of the "cease and desist" letters; would not have been exposed to potential  
23 litigation and other risks associated with having patents relating to Mophie's signature  
24 product issued to himself personally; and would not have incurred excessive legal  
25 fees and costs relating to unnecessary and ineffectual actions undertaken by  
26 Defendants and legal fees and costs relating to correcting mistakes made by  
27 Defendants.

1           87. As a direct and proximate result of Defendants' professional malpractice,  
2 Plaintiffs have suffered economic damages in an amount yet to be determined,  
3 including: costs and legal fees paid to Defendants in connection with Defendants'  
4 improper and incompetent services; and legal fees to replacement counsel to transfer  
5 patent applications to Mophie, to file new trademark applications, and to conduct an  
6 audit of Mophie's intellectual property portfolio to protect Plaintiffs from further  
7 damage resulting from Defendants' negligence and incompetence. To date, these  
8 economic damages exceed \$200,000.

9           88. As a direct and proximate result of Defendants' malpractice, the '360  
10 Design Patent is effectively unenforceable, causing economic damage to Plaintiffs in  
11 an amount yet to be determined.

12           89. As a direct and proximate result of Defendants' malpractice, Plaintiff  
13 Mophie also suffered damage to its business reputation, and continues to face damage  
14 and risk to its intellectual property portfolio, causing economic damage in an amount  
15 yet to be determined.

16           90. The conduct of Defendants, and each of them, as alleged above, was  
17 grossly negligent, unconscionable, fraudulent, oppressive, malicious and done  
18 intentionally or in conscious disregard of Plaintiffs' rights and Defendants' fiduciary  
19 obligations, and in order to protect themselves and further their own interests at  
20 Plaintiffs' expenses and to their detriment, so as to justify an award of punitive  
21 damages.

22                           **THIRD CAUSE OF ACTION**

23                   (Legal Malpractice – “Cease and Desist” Letters and Resulting Litigations)

24                           (By All Plaintiffs Against All Defendants)

25           91. Plaintiffs hereby reallege paragraphs 1 through 90 inclusive, which are  
26 incorporated by reference as though set forth in full herein.

27           92. Defendants, and each of them, hold themselves out as specialists in  
28 intellectual property matters, including litigation of patent issues.



1           93. Defendants were, at all times relevant to this complaint, in an attorney-  
2 client relationship with Plaintiffs.

3           94. In handling Plaintiffs' legal matters, Defendants had a legal duty to  
4 exercise that degree of learning, skill, diligence and prudence commonly possessed  
5 and exercised by attorneys of ordinary skill practicing under similar circumstances.  
6 Moreover, by holding themselves out as "specialists" in intellectual property law,  
7 including patent law, Defendants had a duty to apply the learning, skill, diligence and  
8 prudence commonly possessed and exercised by intellectual property and patent law  
9 specialist attorneys. In addition, Defendants owed all customary professional and  
10 fiduciary duties to Plaintiffs, including a duty of loyalty to Plaintiffs not to act  
11 adversely to their interests and to refrain from taking any action or omitting to take  
12 any action which is likely to result in loss, injury, damage, harm or detriment to  
13 Plaintiffs.

14           95. At all times relevant hereto, Defendants failed to use such skill, prudence  
15 and diligence as members of the legal profession commonly possess and exercise in  
16 provision of legal counsel and services for Plaintiff Mophie in connection with the  
17 attempted enforcement of the '360 and '361 Design Patents, in the manner alleged  
18 above. Such acts of malpractice included:

19               a. Incompetently advising Plaintiffs to assert infringement claims  
20 based upon the Design Patents instead of waiting for issuance of the '262 Patent;

21  
22               b. Incompetently preparing "cease and desist" letters with  
23 inappropriately aggressive and threatening language which as drafted would provide  
24 bases for declaratory judgment actions against Mophie;

25               c. Failing to research and analyze the likelihood that the aggressive  
26 and threatening "cease and desist" letters would provoke declaratory judgment  
27 actions against Plaintiffs;

28

1           d.     Failing to advise Plaintiffs as to the likelihood that the “cease and  
2 desist’ letters prepared by Defendants would provoke declaratory judgment actions  
3 against Plaintiffs;

4           e.     Issuing “cease and desist” letters that mistakenly identify Mophie  
5 as the owner of the '360 and '361 Design Patents; and

6           f.     Incompetently advising Mr. Huang to have prepared and filed on  
7 his behalf an unnecessary patent infringement action against Mophie's competitors  
8 based upon the limited Design Patents.

9           96.    As a result of the actions, errors and omissions set forth above,  
10 Defendants have breached their legal duties to Plaintiffs, have been professionally  
11 negligent and have committed professional malpractice.

12           97.    But for Defendants' professional malpractice, Plaintiff Mophie would not  
13 have would not have been sued in two separate declaratory judgment actions,  
14 Plaintiffs would not have filed the California Lawsuit, and would not have incurred  
15 excessive legal fees and costs relating to unnecessary and ineffectual actions  
16 undertaken by Defendants or legal fees and costs relating to correcting mistakes made  
17 by Defendants.

18           98.    But for Defendants' professional malpractice, Mr. Huang would not have  
19 had the '360 and '361 Design Patents improperly issued in his name, or such would  
20 have been transferred to Mophie prior to the issuance of the “cease and desist” letters;  
21 would not have been exposed to potential litigation and other risks associated with  
22 having patents relating to Mophie's signature product issued to himself personally;  
23 and would not have incurred excessive legal fees and costs relating to unnecessary  
24 and ineffectual actions undertaken by Defendants or legal fees and costs relating to  
25 correcting mistakes made by Defendants.

26           99.    As a direct and proximate result of Defendants' professional malpractice,  
27 Plaintiffs have suffered economic damages in an amount yet to be determined,  
28 including: costs and legal fees paid to Defendants in connection with Defendants'

1 improper and incompetent services; costs and legal fees charged by Defendants in  
 2 association with correcting Defendants' own mistakes, including filing the California  
 3 Case; costs and legal fees to replacement counsel to defend against the declaratory  
 4 judgment actions; costs and legal fees and costs to prosecute the California Action.  
 5 To date, these economic damages exceed \$215,000.

6 100. As a direct and proximate result of Defendants' malpractice, Mophie also  
 7 suffered damage to its business reputation, and continues to face damage and risk to  
 8 its intellectual property portfolio, causing economic damage in an amount yet to be  
 9 determined.

10 101. The conduct of Defendants, and each of them, as alleged above, was  
 11 grossly negligent, unconscionable, fraudulent, oppressive, malicious and done  
 12 intentionally or in conscious disregard of Plaintiffs' rights and Defendants' fiduciary  
 13 obligations, and in order to protect themselves and further their own interests at  
 14 Plaintiffs' expense and to their detriment, so as to justify an award of punitive  
 15 damages.

#### 16 **PRAYER FOR RELIEF**

17 WHEREFORE Plaintiffs pray for judgment against Defendants as follows:

- 18 1. For actual damages as alleged above;
- 19 2. For punitive damages;
- 20 3. For attorney's fees as allowed by law;

21 ///

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1 4. For costs of suit herein incurred; and


2 5. For such other and further relief as the Court may deem proper.

3  
4 Dated: April 7, 2011

Respectfully Submitted,

5 SCHWARZ, RIMBERG, BOYD & RADER, LLP

6  
7  
8 By:

  
Kathryn Lee Boyd  
Jeff D. Neiderman

9 Attorney for Plaintiffs  
10 Mophie, Inc. and Daniel Huang  
11  
12

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a trial by jury herein.

15  
16 Dated: April 7, 2011

Respectfully Submitted,

17 SCHWARZ, RIMBERG, BOYD & RADER, LLP

18  
19  
20 By:

  
Kathryn Lee Boyd  
Jeff D. Neiderman

21 Attorney for Plaintiffs  
22 Mophie, Inc. and Daniel Huang  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge David O. Carter and the assigned discovery Magistrate Judge is Marc Goldman.

The case number on all documents filed with the Court should read as follows:

**SACV11- 539 DOC (MLGx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☒ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



## Name &amp; Address:

Kathryn Lee Boyd, Esq. (SBN 189496)  
 Jeff D. Neiderman, Esq. (SBN 203818)  
 Schwarcz, Rimberg, Boyd & Rader, LLP  
 6310 San Vicente Boulevard, Suite 360  
 Los Angeles, California 90048

ORIGINAL

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

Mophie, Inc., formerly known as mStation  
 Corporation, a California Corporation, and Daniel  
 Huang, an individual

PLAINTIFF(S)

v.

Loza & Loza, LLP, a California Limited Liability  
 Partnership, Julio Loza, an individual and Christine S.  
 Loza, an individual

DEFENDANT(S).

CASE NUMBER

SACV11-00539 DOC (MLGx)

SUMMONS

TO: DEFENDANT(S): Loza & Loza, LLP, a California Limited Liability Partnership,  
Julio Loza, an individual and Christine S. Loza, an individual

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ \_\_\_\_\_ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Kathryn Lee Boyd, Esq., whose address is 6310 San Vicente Boulevard, Suite 360 Los Angeles, California 90048. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: \_\_\_\_\_

APR 27 2011

By: \_\_\_\_\_

ROLLS ROYCE PASCHAL

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

## Name &amp; Address:

Kathryn Lee Boyd, Esq. (SBN 189496)  
 Jeff D. Neiderman, Esq. (SBN 203818)  
 Schwarcz, Rimberg, Boyd & Rader, LLP  
 6310 San Vicente Boulevard, Suite 360  
 Los Angeles, California 90048



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

Mophie, Inc., formerly known as mStation  
 Corporation, a California Corporation, and Daniel  
 Huang, an individual

PLAINTIFF(S)

v.

Loza & Loza, LLP, a California Limited Liability  
 Partnership, Julio Loza, an individual and Christine S.  
 Loza, an individual

DEFENDANT(S).

CASE NUMBER

SACV11-00539 DOC (MLGx)

SUMMONS

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Julio Loza, an individual and Christine S. Loza, an individual

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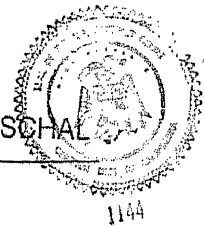
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> Mophic, Inc., formerly known as mStation Corporation, a California Corporation, and Daniel Huang, an individual		<b>DEFENDANTS</b> Loza & Loza, LLP, a California Limited Liability Partnership, Julio Loza, an individual and Christine S. Loza, an individual	
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Schwarcz, Rimberg, Boyd & Rader, LLP 6310 San Vicente Boulevard, Suite 360 Los Angeles, California 90048		<b>Attorneys</b> (If Known)  Kathryn Lee Boyd, Esq. (SBN 189496); Jeff D. Neiderman, Esq. (SBN 203818)	

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;">Citizen of This State</td> <td style="width:33%; border: none;">PTF DEF <input type="checkbox"/> 1   <input type="checkbox"/> 1</td> <td style="width:33%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:33%; border: none;">PTF DEF <input type="checkbox"/> 4   <input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none;"><input type="checkbox"/> 2   <input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none;"><input type="checkbox"/> 5   <input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none;"><input type="checkbox"/> 3   <input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none;"><input type="checkbox"/> 6   <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6										

**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from another district (specify):    ☐ 6 Multi-District Litigation    ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:** JURY DEMAND: ☒ Yes   ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☐ Yes   ☒ No      **MONEY DEMANDED IN COMPLAINT:** \$ amt to be determined at trial

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 (1) Professional Negligence; (2) Breach of Fiduciary Duty; and (3) Negligent Misrepresentation all arising out of 29 U.S.C. 1338

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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**SACV11-00539 DOC (MLGx)**

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.